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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1940

No. 831

WILLIAM H. TEGTMEYER, ET AL.,
Respondents,

vs.

DAISY C. TEGTMEYER,
Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, AND BRIEF IN SUPPORT THEREOF.

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DAISY C. TEGTMEYER,
Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, STATE OF ILLINOIS.

To the Chief Justice and Associate Justices of the United States Supreme Court:

Daisy C. Tegtmeyer, the petitioner above-named, respectfully prays that writs of ceritorari issue to review the orders of the Appellate Court of Illinois for the First District, confirming the orders of the Circuit Court, Cook County. The judgment of the Appellate Court of Illinois became final on July 8, 1940. Petition for leave to appeal from Appellate Court of Illinois, First District, to the Supreme Court of Illinois was denied on October 17, 1940. Leave to file petition for certiorari was extended to March 15, 1941.

Questions Presented.

The appeal below presented a number of questions and no new or different questions arise on this petition. The following are the questions:

1. Did the Courts of the State of Illinois have jurisdiction of petitioner's person or the subject matter of the controversy.

2. May a State Court imprison a person for the nonpayment of a debt and inflict cruel and inhuman punishment in violation of the 8th and 14th Amendment of the U. S. Constitution, and the Constitution of the State of Illinois.

3. Has the State of Illinois jurisdiction of an estate of a deceased which was being administered in the State of Iowa.

Statutes Involved.

U. S. Constitution, Amendments 8th and 14th.
Code of Iowa Chapter 506, Estate of Absentees.
Bill of Rights of the Constitution of the State of Illinois.
The Code of Civil Practice, Statutes of Illinois.

RESTATEMENT OF THE LAW OF CONFLICT OF LAWS

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"Sec. 43. Exercise of Power by States of United States Without Jurisdiction.

Under the Constitution of the United States, the States cannot create interests if they have no jurisdiction.

Comment:

a. Effect of Fourteenth Amendment to Constitution. If a State attempts to exercise power by creating in-

terests with respect to persons or things which it has no jurisdiction to create, its action is in violation of the Fourteenth Amendment to the Constitution and is void in the State itself. The Supreme Court of the United States may review all cases whether from a lower Federal court or from a State court of last resort which involve a question of the exercise of power on the part of a State when it has no jurisdiction."

STATEMENT.

The petitioner has, since July 27, 1933, been confined in the Cook County Jail pursuant to a Writ of *Ne Exeat* of July 27, 1933 and a contempt order of January 5, 1934 adjudging her in contempt of Court with directions that she stand committed and to remain in the County Jail of Cook County, Illinois, until she pay certain moneys and do other acts pertaining to the payment of a judgment rendered against her.

One Henry Tegtmeyer died intestate in Burlington, Iowa, in 1912. His wife, Louise died intestate in 1907.

Both estates were filed for administration in the District Court of Des Moines County, Iowa. Surviving Henry and Louise Tegtmeyer were six children. Frank, William, Edward, Anna, Minnie, and Lillian.

Son, Edward, was administrator of both estates. In administering both estates in Iowa, no mention was made of son Frank for the reason that he was in the habit of disappearing from time to time. The Iowa Courts were not apprised of Frank's disappearance, existence or interest in his parents' estate. Neither Frank nor his estate

were made party to either parents' estate proceeding in Iowa. Administrator Edward and the other four children wishing to close the father's estate did so by dividing the estate between them and in addition entered into a private agreement between them, making provisions for one-half of the share of Frank as follows:

WITNESSETH:

Whereas Edward Tegtmeyer was the administrator of the estate of his deceased mother, Louise Tegtmeyer, and

Whereas he is now the administrator of the estate of his deceased father, Henry Tegtmeyer, and

Whereas all the above named parties are the heirs of said Louise and Henry Tegtmeyer, deceased, and

Whereas there was an older son, Frank Tegtemeyer, who many years ago disappeared and who is supposed to be dead, and

Whereas the said Edward Tegtmeyer as administrator of his deceased mother's estate, distributed the assets thereof, amongst the parties of this agreement, on their stipulation that in the event that the said Frank Tegtmeyer would ever appear and claim his share of said estate, that they would contribute their proportionate part thereof to settle said claim, and

Whereas the said parties of the second part are now desirous of obtaining a settlement of their interests in their deceased father's estate,

Therefore it is agreed as follows: The said Edward Tegtmeyer, administrator of the estate of Henry Tegtmeyer, is to proceed to make a final settlement of said estate and distribute the net assets thereof, amongst the heirs on the assumption that the said Frank Tegtmeyer is dead and left no heirs, but the said Administrator is to retain $5,000.00 out of the assets of said

estate as a trust fund to be kept on deposit in the name of Edward Tegtmeyer, trustee, for a period of ten years in a reliable bank or trust company, and the interest to be added to and become part of said trust fund.

At the termination of the period of ten years from this date, or sooner, if it can be proven that the said Frank Tegtmeyer is deceased, and left no heirs, then the said trust fund with its accumulations is to be distributed in equal parts to the said parties to this contract unless in the meantime the said Frank Tegtmeyer appears and makes claim for his share of said estates.

Should any of the parties to this contract die in the meantime his or her share of said trust fund shall be paid over to the heirs or estate of said deceased party, and the same disposition shall be made of the balance, should there be any remaining, if the said Frank Tegtmeyer should appear and settlement be made with him.

And it is further agreed and understood that the receipts executed by parties of the second part, are not intended to include or receipt for their interests in this $5,000.00 fund.

It is further agreed that Daisy Tegtmeyer, the wife of Edward Tegtmeyer, is to sign this contract with her husband as a guarantee that the said trust fund of $5,000.00 with the interest accumulations, will be kept and distributed as herein provided.

Edward Tegtmeyer,
Daisy C. Tegtmeyer,
W. H. Tegtmeyer,
Anna L. Corbett,
Minnie C. White,
Lillian Nave."

Son and Administrator Edward died and left him surviving his wife and petitioner herein.

On the theory that petitioner, wife of Edward, was a party to the aforesaid agreement, a suit in equity was filed against her in Illinois as sole heir of Edward, and as trustee. The suit was filed by the other heirs to the agreement, or their representatives, for an accounting of the alleged trust created by the said agreement. The purpose of the suit was to distribute the $5,000 which represented one-half of Frank's share in his father and mother's estates, the other one-half of Frank's share, $5,000, being held by William Tegtmeyer of Iowa as Trustee of the real estate of their mother's estate which he has never accounted for or distributed by the order of any court of any jurisdiction or in accordance with the circumstances of which he became Trustee of all of his mother's real estate which amounted to $30,000. And the fact that he was Trustee and was in possesion of all her real estate, this fact was not made known by him to the Probate Court of Iowa at the time of her death. Neither Frank nor his estate were made a party to this action, and no attempt was made to serve Frank by publication or otherwise. The position of plaintiffs being that Frank and his heirs, if any, were presumably dead, and therefore not entitled to notice of any kind. Issue was joined and the matter was referred to a master. He recommended that a decree be entered against petitioner herein in accordance with the prayer of the bill. The decree was affirmed by the Illinois Appellate Court, 259 Ill. App. 661 and by the Illinois Supreme Court, 348 Ill. 439.

After the affirmance by the Supreme Court of Illinois the cause was referred to a Master in Chancery to take the account. During these proceedings an order was entered June 12, 1933 awarding writ of *ne exeat republica* and an order was entered January 5, 1934, adjudging peti-

tioner in contempt of Court for failure to turn over money and answer certain questions. Bail was fixed in the sum of $30,000 in the *ne exeat* proceedings and she was taken into custody July 27, 1933. She was also held by the Sheriff under a mittimus issued pursuant to the contempt order of January 5, 1934.

Petitioner contended that the *ne exeat* and the contempt orders were void because the Courts in Illinois have never had jurisdiction of the subject matter or the person of petitioner, that the Iowa Courts having administered the estates in question have sole jurisdiction, and further that the order finding her guilty of contempt for her failure to pay over money was void.

On appeal to the Illinois Appellate Court the orders were affirmed and leave to appeal to the Supreme Court of Illinois was denied. The Appellate Court of Illinois rendered an opinion printed in the appendix.

From the entire proceedings it is evident that the petitioner was discriminated against in such a way as to deny to her equal protection of the laws. There has been a clear violation of due process and the equal protection clauses of the 14th Amendment.

The State Court has decided the case in a way not in accord with applicable decisions of this Court. The appeal involves a substantial question as will appear from the applicable cases cited in the brief which is hereby made part of this petition. The Illinois Statutes, the Constitution and Bill of Rights of that State have been construed in a manner repugnant to the Constitution of the United States.

A reading of the opinion of the Appellate Courts of the State of Illinois in their entirety and the quotations given in the brief accompanying this petition demonstrates that a Federal question was presented to the State Court and

that the decisions actually determined federal questions so raised.

Specifications of Error To Be Urged.

1. That the Courts of the State of Illinois did not have jurisdiction of petitioner or the subject matter of the action.

2. That the judgments, decrees and orders are void in that petitioner is being deprived of her life, liberty and property without due process of law and has been cruelly punished as a result thereof.

3. That the judgments, decrees and orders may not be enforced by contempt but can only be enforced by execution against property.

Reasons for Granting the Writs.

The questions involved in this case is one of Constitutional law and involves petitioner's liberty and property.

Petitioner has been incarcerated in the common jail of Cook County, Illinois, under a writ of *Ne Exeat* and contempt order for over six years, that said Cook County jail was not and is not intended to be or become a penal institution for the incarceration of persons for a long period of time but was and is intended to be a place for holding persons charged with crime during the pendency of their cases and for persons sentenced for minor crimes and misdemeanors for a short period of time; that on account of the nature of said Cook County jail your petitioner has been compelled to remain in extremely close confinement therein with no fresh air or exercise, has been forced to associate with undesirable criminals charged with infamous crimes, and has received improper, insufficient, poorly cooked and low grade food and liquids, not containing the necessary vitamins to properly nourish and maintain the human body, and that as a direct result

of said close confinement, lack of fresh air and exercise and insufficient nourishment, your petitioner's health has been irreparably injured to such an extent that she is now suffering from active tuberculosis, myocarditis, anemia, arteriosclerosis and a 50% loss of vision due to glaucoma, which several diseases and infirmities have rendered it impossible for your petitioner to work at any gainful occupation whatsoever. Petitioner was a strong, healthy woman at the time she was ordered to be turned over to the custody of the sheriff and incarcerated in the common jail of Cook County July 23, 1933.

Petitioner therefore charges that her being imprisoned in the said common jail of Cook County because of the nature of and conditions in said institution, for such an extremely long period of time, six years, constituted a violation of her legal and constitutional rights and a violation of the eighth and fourteenth amendments of the United States Constitution and of the Bill of Rights found in the Constitution of the State of Illinois.

The decision of the Illinois Courts are in conflict with *Noble* v. *Union River Logging,* 147 U. S. 165, 173; *Scott* v. *MacNeal,* 154 U. S. 56, and the Constitution of the United States.

This Court should determine whether a State Court may imprison a citizen in a common jail for life for the nonpayment of an alleged debt.

This Court should take jurisdiction because of the violation of the due process clause of the 14th Amendment to the United States Constitution and the 8th amendment thereof.

WHEREFORE, it is respectfully prayed that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Appellate Court of Illinois for the